IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3558 OF 2007

Yeshwant Pandurang Gajare..... ....Petitioner
V/s
Ganpati Shivaji Teli. ....Respondent.

Mr.G.S.Godbole i/by Mr.V.M.Mali, Adv. For the petitioner.

Mr.S.P.Kadam, Adv. For the respondent.

CORAM: A.P.DESHPANDE, J.
29/8/07

PC:

Rule. Rule made returnable forthwith.

Taken up for final hearing by consent of both the parties.

The respondent is original plaintiff who instituted a suit for declaration to the effect that he is the owner of the suit property. The next relief claimed is for removal of the structure/encroachment made by the present petitioner on the suit property and delivery of vacant possession to the plaintiff. It is thus clear that the present petitioner is in possession of the suit property and at the time of filing of the suit had commenced construction of house on the suit property. The trial Court rejected the application for temporary injunction moved by the respondent herein and aggrieved thereby respondent carried the appeal before the District Judge. The District Judge reversing the order passed

by the trial Court allowed the appeal and granted temporary injunction as prayed for. Photographs shown to the Court go to indicate that the structure of ground floor is almost complete including casting of the slab. No doubt the respondent submits that the said construction has been carried out in breach of status quo order. Whereas the petitioner claims otherwise. The fact remains that till date no application has been moved by the present respondent alleging breach of order passed by the Court. In this fact situation, learned counsel for the petitioner submitted that the petitioner be permitted to complete the construction upto ground floor and the entire construction upto ground floor would be at the costs and risk of the petitioner. The petitioner further undertakes not to claim any equity on account of he having constructed upto ground floor. In my view, the said undertaking if accepted and appropriate orders passed thereupon would protect the interest of the present respondent-plaintiff. If and in case the petitioner is not permitted to complete the construction of the ground floor same would unnecessarily cause inconvenience and loss to the petitioner as the construction is almost complete and moreso when the petitioner is ready and willing to complete the said construction at his own costs and risk. In the result impugned order stands modified to the following extent as under:

The petitioner is permitted to complete the construction of ground floor on the suit property. Petitioner is further permitted to construct a

parapet wall on the slab over the ground floor. The petitioner shall not carry out any construction above the ground floor barring the parapet wall. The construction carried out by the present petitioner upto ground floor shall be at the risk and costs of the petitioner and the petitioner shall not be entitled to claim any equity on the premise that the plaintiff has constructed the structure upto ground floor by investing money. It is made clear that the question as to whether the construction was carried out by the petitioner in breach of status quo order or otherwise is left open to be urged before the trial Court. All questions raised in writ petition are left open to be agitated in the Court below. The petitioner shall file an undertaking that the construction permitted to be carried out by him upto ground floor on the suit property shall be at the costs and risk of the petitioner and the petitioner shall not claim any equity on that count at the time of final hearing of the matter. Writ petition thus stands disposed of. Rule made absolute in above terms.

29.8.07